IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 332 of 1981
with
CIVIL REVISION APPLICATION NO 238 of 1983
with
CIVIL APPLICATION No 3811 of 1981
in
APPEAL FROM ORDER No 332 of 1981

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S J.M.BAKSHI AND CO.

Versus

M/S MAITRI EXPORTS PVT LTD

Appearance:

1. Appeal from Order No. 332 of 1981
MR MK VAKHARIA for Petitioner No. 1
MR CH VORA for Petitioner No. 1
MS ARCHANA R ACHARYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 11/12/2003

ORAL JUDGEMENT

FACTS OF APPEAL FROM ORDER NO 332 OF 1981

1. M/s.J.M.Bakhsi & Co., New Kandla, Dist.Kutch, appellant - original plaintiff filed a suit for recovery of Rs.5,40,405.94 with costs and interest as per the averments made in the plaint. In the said suit, Maitry Exports Pvt.Ltd. - respondent - original defendant filed an application Exh.36 under Section 21 read with Order 7 Rule 10 of Code of Civil Procedure wherein defendant contended that the court had no jurisdiction to entertain the suit. It was contended that oral contract between the parties was entered at Bombay and defendant is also residing and carrying on business at Bombay. In view of the same, it was contended that the trial court has no jurisdiction to hear this matter. The learned Civil Judge (S.D.), Kutch-Bhuj by his order dated 23rd October, 1981, was pleased to allow the application Exh.36 filed by the defendant and held that trial court had no jurisdiction and plaint to be presented before the proper court.

1.1 Being aggrieved and dissatisfied with the said order, the plaintiff filed Appeal From Order No.332 of 1981 before this Court on 25th November, 1981.

1.2 The said Appeal From Order was admitted by this Court by order dated 26th November, 1981, and 18.3.1982 on Civil Application No.3811 of 1981 stayed the operation of the trial court's order returning the plaint for presentation to proper court.

FACTS OF CIVIL REVISION APPLICATIONS NO 238/83 & 905/82

2. In that very suit, on 14th April, 1982, the original plaintiff J.M.Bakshi & Co. made an application Exh.42 in the suit stating that Maitry Exports Pvt.Ltd. had got the fixed deposit of Rs.4,06,000/- transferred to the Bombay office of the Syndicate Bank without any order of the court and for an order requiring the petitioner to deposit the said amount in the court. In that matter, the learned Civil Judge (S.D.), Kutch-Bhuj was pleased to pass the order on 14th April, 1982, and directed the petitioner to deposit the amount either in the court or in any nationalised bank at Gandhidham on or before 30th April, 1982.

2.1 Being aggrieved and dissatisfied with the said order dated 30th April, 1982, the defendant Maitry Exports Pvt.Ltd made an application being Civil Revision Application No.905/82 before this Court. This Court was

pleased to stay by its order dated 4th April, 1982, and observed that defendant may move the learned trial Judge for modification of the order under revision. The said interim relief continues till date under various orders granted by this Court. The said revision application is pending.

2.2 During the pendency of the said revision application, on 16th June, 1982, again the defendant made an application Exh.48 in the suit submitting that the ex-parte order dated 14.4.82 passed by the trial court was without jurisdiction, nullity and ineffective and that the same be set aside and modified. The learned Civil Judge (S.D.), Bhuj-Kutch by his judgment and order dated 29.1.83 was pleased to dismiss the said application.

2.3 Being aggrieved and dissatisfied with the said order dated 29.1.83 passed by the learned Civil Judge (S.D.), Bhuj-Kutch below application Exh.48 in Special Civil Suit No.27/81, the defendant filed Civil Revision Application No.238 of 1983 before this Court. The said application was filed on 21st February, 1983.

2.4 It may be noted that thereafter in the said suit defendant had also filed another application Exh.48 for review as well as for modifying the said order dated 14.4.82. The learned trial Judge by his order dated 29.1.83 was pleased to dismiss the said application.

3. Today the matter is taken up for hearing. Mr.M.K.Vakharia, learned advocate with Mr.C.H.Vora appears on behalf of M/s.J.M.Bakshi & Co. and Ms.Archna Acharya, learned advocate appears on behalf of M/s.Maitry Exports Pvt.Ltd., original defendant - respondent herein.

4. Pending the Appeal From Order No.332/81, Civil Revision Application No.905/82 and Civil Revision Application No.238/83, the defendant approached the plaintiff and showed its willingness to settle the dispute. The parties have therefore agreed to settle the matter out of court on the following terms and conditions:

(i) M/s.Maitry Exports Pvt.Ltd. has agreed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to M/s.J.M.Bakshi & Co. towards full and final settlement and to the satisfaction of the claim of Rs.5,40,405.94 alongwith interest of M/s.J.M.Bakshi & Co. in the Special Civil Suit

No.27 of 1981 filed before the court of Civil Judge (S.D.), Kachchh at Bhuj. The agreed amount of Rs.1,00,000/- is paid by M/s.Maitry Exports Pvt.Ltd. to M/s.J.M.Baxi & Co. by Demand Draft bearing No.577556 dated 6.11.2003 drawn on Union Bank of India, Mumbai Samachar Marg, Mumbai - 400 023. M/s.J.M.Baxi & Co. shall have no claim whatsoever against M/s.Maitry Exports Pvt.Ltd in respect of their claim in the Special Civil Suit No.27 of 1981.

(ii) M/s.J.M.Baxi & Co. shall withdraw Special Civil Suit No.27 of 1981 filed by it before the court of Civil Judge (S.D.), Kachchh at Bhuj and the Appeal From Order No.332 of 1981 filed by it before this Court. M/s.Maitry Exports Pvt.Ltd. shall withdraw Civil Revision Application No.905 of 1982 and Civil Revision Application No.238 of 1983 filed by it before this Court.

5. A copy of the consent terms shall be kept on record of Appeal From Order No.332 of 1981, Civil Revision Applications No.905/82 & 238/83 in this behalf.

6. The said consent terms dated 11th December, 2003, filed by learned advocate for the parties is taken on record. Yadi be sent to the trial court.

7. In view of the same, the Appeal From Order No.332 of 1981, Civil Revision Application No.238/83 are accordingly disposed of with no order as to costs. Rule is discharged.

8. In view of the same, the Civil Application No.3811 of 1981 is accordingly disposed of with no order as to costs.

(K.M. Mehta, J.)

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